

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK , SS.

SUPERIOR COURT
NO.

PHILIP F. MULVEY, JR.,
Plaintiff

55233

VS.

WAYNE B. HOLLINGSWORTH and
GARY A. PAPPAS,
Defendants

AFFIDAVIT OF PHILIP F. MULVEY, JR.

I, Philip F. Mulvey, Jr., being duly sworn,
depose and say:

That I am an attorney and a member of the
Massachusetts Bar Association, having been admitted
to practice law in this Commonwealth in the spring of
1977.

My education includes a B.A. in Biology from
Clark University, an M.S. in Biology from Bowling
Green University, a Ph.D. in Biology from the State
University of New York at Buffalo, and a J.D. from
Suffolk University.

Prior to entering the profession of law, I
worked for NASA and the United States Army conducting
scientific experiments for both.

I also taught at Suffolk University in the
Biology Department for twenty-one (21) years, full
time and part time.

After having been admitted to the Massachusetts

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
FILED

JUL 27 1982

MICHAEL JOSEPH
CLERK OF COURT

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Bar in 1977, and while still teaching at Suffolk University, I opened my own law office and began to specialize in the field of plaintiff-medical malpractice. Presently, my caseload is about ninety (90) percent medical malpractice.

In November of 1981, I joined the law firm of Wynn & Wynn, One Taunton Green, Taunton, Massachusetts and stayed there until June 4, 1982, at which time we amiably parted ways because the firm did not wish to get into medical malpractice litigation on a large scale.

Prior to this time, I had met and talked to Wayne B. Hollingsworth of the firm of Hollingsworth and Pappas, Ten Union Wharf, Boston, Massachusetts, about the feasibility of becoming associated. There was a need for someone with a medical background to join said firm because Hollingsworth & Pappas were to be handling a large number of asbestos cases, being defense counsel.

On or about June 1, an agreement was reached that I would receive a salary of \$45,000.00. Additionally, with regard to five (5) to six (6) significant medical malpractice cases I had worked on for years, there would be a percentage fee split with the firm on any monies received on these cases. Specifically, sixty (60) percent of the fees received

by the office on these cases would go to myself and forty (40) percent to the firm. On or about June 7, 1982, I commenced employment with the defendants' law firm.

On or about Thursday, July 8, 1982, one of the significant cases I brought to the firm was settled for \$800,000.00. The name of the case is Clair O'Callaghan, Executrix for the Estate of Francis Dorion v. John Murphy, et al, Norfolk Superior Court, and it was referred to me by Attorney Thomas Barron, 1372 Hancock Street, Quincy, Massachusetts, who was to receive fifty (50) percent of the fee.

After the settlement of this case, but prior to any disbursements, defendant, Wayne B. Hollingsworth refused to go along with the earlier agreements. He wanted to give Attorney Thomas Barron less than his percentage, and offered to give me far less than my agreed upon share.

I met with both partners, Wayne Hollingsworth and Gary Pappas and both attorneys insisted on changing the terms of our agreement. I steadfastly refused.

On July 12, 1982, the case was on the list at Norfolk County. That day I settled the hospital portion, and received from Judge Irwin a 30-day order to August 12 for both parts of the case.

I met with Gary Pappas on July 19, 1982, and was told there was no change in the firm's position. On July 20, 1982, I began packing my files and other personal items, as I had told the defendants I would no longer be a part of this.

At about 2:30 p.m., I told my secretary, Joyce, that I would be gone for thirty (30) minutes.

When I came back, I found my plant, pictures, diplomas and brief case in the reception area. My files and boxes were gone and Joyce was not around.

I then met with Wayne Hollingsworth about my files and other contents, and asked to see them and he responded, "They are not here."

At that time I sought informal advice from a good friend, Bob Popeo of the firm, Mintz, Levin, Cohn, Glovsky and Popeo. As a result of this call, I made an immediate demand for my files, which was again rejected by the defendant Hollingsworth. I also, that night, reported this possible "theft" to the police, as evidenced by Exhibit "A" (Incident Report). Finally, I met the next day with Associate Bar Counsel Dermot Meagher of the Board of Bar Overseers, and registered a formal complaint with the Board.

That night my sons Philip F. Mulvey, III and Brian J. Mulvey went into the office of Hollingsworth

and Pappas asking the return of the files. Despite the fact that Philip was well known at the office, they were met with hostility. Moreover, they were asked to leave as trespassers, and Hollingsworth, while calling the police, threatened if the police don't arrive, that he might have to shoot them.

I spoke to the private security officer at the front gate who stated to myself and to my two sons that there were no reports of a break-in during that day.

I then felt that I needed counsel to handle this so I hired the law firm of Costello, Hourihan, Frattaroli and Barrett of Two Salem Green, Salem, Massachusetts.

On July 21, 1982, my attorneys made a second demand, this one in writing, to the defendants for my files, records and personal materials. (See Exhibit "B")

This letter was hand delivered by constable in the early afternoon of Wednesday, July 21, 1982. Later that afternoon, one of my attorneys, Walter A. Costello, Jr., had a telephone conversation with Hollingsworth. Costello advised him that the files belonged to the clients, and to the referring attorneys, and that he, the defendant, had no right to keep them. Hollingsworth refused to turn them

over, but left the impression that he would release them to the client or referring attorney, if demand was made.

That night I contacted nearly all the referring attorneys and clients and told them what happened. They all agreed to cooperate fully and to make demands for their files.

On Thursday, July 22, 1982, my attorneys made another demand for the files, again by hand delivered letter. See Exhibit "C". Along with this letter, my attorneys included three (3) letters from attorneys ✓ Walter L. Sullivan, (Exhibit "D"), Bryan J. Stephens, (Exhibit "E") and Daniel Hourihan, all making immediate demands for their files. Additionally, my attorney Carmen A. Frattaroli attempted to reach Hollingsworth but was told he was not in. He left a message, but has not received a call back.

Attorney Sullivan went personally on Friday, July 23, 1982, to pick up his file (the Downing Case) and was told Hollingsworth was "away until Monday or Tuesday". Attorney Stephens and other clients and attorneys have made similar demands with similar lack of success. Also, my attorney tried to call Hollingsworth on Monday, July 26, 1982, without success.

There are approximately twenty-four (24) files

involved that are being withheld, all in varying stages of litigation. Without these files, I cannot properly represent the clients' interests, and severe prejudice may result.

Specifically, on this coming Friday, July ~~30~~³¹, 1982, my client and plaintiff, Mrs. William Robinson, Executrix of the Estate of William Robinson, is being deposed at the offices of Ficksman & Conley, 40 Broad Street, Boston, Massachusetts.

Similarly, the Brown case is scheduled for trial on Monday, August 2, 1982, before Judge Paul Garrity in Suffolk Superior Court.

On the Green case, there was a motion today, for speedy trial.

Thus, I am seeking a temporary restraining order and a preliminary injunction on the following grounds:

a) That my clients will suffer irreparable injury if it is not granted.

b) There is a likelihood of success on the merits.

c) That the public interest as well as the interest of clients will be harmed if the order is not granted.

d) The other parties will not suffer greater harm if the stay is granted than if it is denied.

The likelihood of success is very good and the injunctions are sought so that Attorney Mulvey may continue his practice.

Signed under the pains and penalties of perjury
this 27 day of July, 1982.

Philip F. Mulvey, Jr.
PHILIP F. MULVEY, JR.